DOCUMENT RESUME

ED 289 145 CG 020 412

AUTHOR Salm, Don
TITLE Crimes against Children: D. Interfering with Custody. Discussion Paper 86-1D.
INSTITUTION Wisconsin State Legislative Council, Madison.
PUB DATE 29 Sep 86
NOTE 35p.; For related documents, see CG 020 406-414.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Reports - General (140)

EDRS PRICE MF01/PC02 Plus Postage.
DESCRIPTORS Adolescents; *Child Abuse; *Child Custody; Children; *Compliance (Legal); *Crime; Legal Responsibility; *State Legislation; Victims of Crime
IDENTIFIERS *Kidnapping; Parent Kidnapping; *Wisconsin

ABSTRACT

This document is one of six discussion papers prepared for the Wisconsin Legislative Council's Special Committee on Crimes Against Children. The introduction explains the committee's task of conducting a thorough examination of state laws relating to crimes against children, reviewing major policy issues affecting those laws to determine whether substantive changes are needed in various statutory provisions and reorganizing the laws. This paper deals specifically with the problem of interfering with custody. Part I covers the laws relating to the abduction of children, part II deals with the interfering with custody statutes, and part III discusses unauthorized placement for adoption. For each of these issues, there is a section explaining current law and a section giving suggestions for statutory revisions. Appendix 1 contains a chart setting forth the elements and penalty levels of various criminal statutes which relate, in full or in part, to the unlawful taking or concealing of a child. Appendix 2 contains copies of the statutes covered in the report, arranged in numerical order, and a copy of ss. 939.50 to 939.52, which prescribe the basic criminal penalty classification system used in the Criminal Code. (NB)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED289145

CRIMES AGAINST CHILDREN
D. INTERFERING WITH CUSTODY

DISCUSSION PAPER 86-1D

CG 020412

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

☑ This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY

Bonnie Reese

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

Wisconsin Legislative Council Staff
State Capitol

September 29, 1986
Madison, Wisconsin

TABLE OF CONTENTS

	Page
INTRODUCTION	1
PART I - ABDUCTION	3
A. EXPLANATION OF CURRENT LAW	3
1. Description of Abduction Statute and Related Statutes	3
2. Discussion of Relevant Court Decisions and Other Interpretations of the Law	4
B. SUGGESTIONS FOR STATUTORY REVISIONS	4
1. "Immoral Purpose" Element	4
2. Applicability	4
3. Levels of Abduction	5
4. Custody of a Parent or Guardian	6
PART II - INTERFERING WITH CUSTODY	7
A. EXPLANATION OF CURRENT LAW	7
1. Interfering With Custody of a Child	7
2. Interference by Parent With Other Parent's Custody Rights	8
B. SUGGESTIONS FOR STATUTORY REVISIONS	9
1. Applicable Ages	9
2. "Outside of State" Requirement	9
3. Consent to Taking	10
4. Venue	11
5. Defenses	11
6. Returning the Child	13
7. Taking Custody	13
PART III - UNAUTHORIZED PLACEMENT FOR ADOPTION	15
A. EXPLANATION OF CURRENT LAW	15
1. Description of Unauthorized Placement for Adoption Statute	15
2. Description of Relevant Court Decisions and Other Interpretations of the Law	15
B. SUGGESTIONS FOR STATUTORY REVISIONS	15

TABLE OF CONTENTS (continued)

Page

APPENDIX 1 - COMPARISON OF CRIMES INVOLVING TAKING OR CONCEALING CHILDREN 17

APPENDIX 2 - STATUTES DISCUSSED IN DISCUSSION PAPER 86-1D (LISTED IN NUMERICAL ORDER) 21

939.50 - Classification of Felonies 21
939.51 - Classification of Misdemeanors 21
939.52 - Classification of Forfeitures 22
940.30 - False Imprisonment 23
940.305 - Taking Hostages 23
940.31 - Kidnapping 23
940.32 - Abduction 24
946.71 - Interference with Custody of Child 24
946.715 - Interference by Parent with Parental Rights of Other Parent 25
946.716 - Unauthorized Placement for Adoption 26

Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Crimes Against Children — September 29, 1986

DISCUSSION PAPER 86-1D*

CRIMES AGAINST CHILDREN

D. INTERFERING WITH CUSTODY

INTRODUCTION

Discussion Paper 86-1D is the fourth of a series of Discussion Papers that will be prepared for the Legislative Council's Special Committee on Crimes Against Children. The Special Committee is conducting a thorough examination of state laws relating to crimes against children, including:

1. Reviewing major policy issues affecting these laws to determine whether substantive changes are needed in such statutory provisions as abuse of children; sexual assault; child enticement; lewd and lascivious conduct; abduction; incest; abandonment; and others.

2. Reorganizing these laws, to the extent appropriate, so that like provisions are logically grouped; ambiguities and conflicts in the present laws are reconciled; and relevant Supreme Court and Court of Appeals decisions and Attorney General opinions are codified.

The Special Committee review will be based, in part, on a project undertaken, at the request of Senator Barbara Ulichny, by the University of Wisconsin-Madison Law School and Extension. This project resulted in a preliminary draft proposal entitled "Crimes Against Children: A Proposed Chapter of the Wisconsin Statutes" (July 1985), prepared by Attorney Ronni G. Jones, under the supervision of a Law School/Extension faculty advisory committee. The draft proposal (hereafter referred to as the Law School Proposal) suggests certain policy changes in various statutes relating to crimes against children and suggests the creation of a separate chapter of the statutes on crimes against children, organized by "the interest of the child sought to be protected."

---

*This Discussion Paper was prepared by Don Salm, Staff Attorney, Legislative Council Staff.

For Special Committee discussion purposes, the issues and statutes to be examined will be grouped into the following separate Discussion Papers which will describe the statutes under discussion and summarize suggestions for changes in these statutes:

Discussion Paper 86-1A: Physical and Psychological Abuse: The Paper will cover ss. 940.201, abuse of children; 940.203, sexual exploitation; and 940.225, sexual assault.

Discussion Paper 86-1B: Sexual Morality: The Paper will cover ss. 944.06, incest; 944.12, enticement for immoral purposes; 944.15 fornication; 944.17, sexual gratification; 944.20 and 944.21, lewd behavior; 944.25, exposure to harmful materials; and 944.32, soliciting prostitutes.

Discussion Paper 86-1C: Physical Neglect: The Paper will cover ss. 940.27, failure to support; 940.28, abandonment of a young child; and 940.29, abuse of residents of facilities.

Discussion Paper 86-1D: Interfering With Custody: The Paper will cover ss. 940.32, abduction; 946.71, interference with custody of child; 946.715, interference by parent with parental rights of other parent; and 946.716, unauthorized placement for adoption.

Discussion Paper 86-1E: Contributing to Delinquency of a Minor: The Paper will cover ss. 947.15, contributing to delinquency; 947.08, crime comics; 125.07, serving alcohol beverages to minor; 161.46, distributing drugs to minor; 943.34, receiving stolen property from minor; and 946.46, encouraging probation or parole violation.

Discussion Paper 86-1F: Regulatory Offenses Directed at Children: The Paper will cover ss. 103.06 to 103.86, employment regulations; 118.13, pupil discrimination; 146.01, infant blindness; 151.03, lead poisoning; 175.20, amusement places; 444.09 (4), boxing exhibitions; 940.26, hazing; 941.22, furnishing a pistol to a minor; 942.02, strip search by school employe; 946.63, concealing death of a child; and 943.35, receiving property from a child.

Discussion Paper 86-1D is organized as follows: Part I covers the laws relating to abduction of children; Part II deals with the interfering with custody statutes; and Part III discusses unauthorized placement for adoption. Appendix 1 contains a chart setting forth the elements and penalty levels of various criminal statutes which relate, in full or in part, to the unlawful taking or concealing of a child. Appendix 2 contains copies of the statutes covered in the Discussion Paper, arranged in numerical order, plus a copy of ss. 939.50 to 939.52, which prescribe the basic criminal penalty classification system used in the Criminal Code.

PART I

ABDUCTION

A. EXPLANATION OF CURRENT LAW

1. Description of Abduction Statute and Related Statutes

Under the abduction statute, any person who, for any unlawful or immoral purpose, does any of the following is guilty of a Class C felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both):

a. By force or threat of imminent force, takes any child under 18 years of age from his or her home or the custody of his or her parent or guardian;

b. Entices any child under 18 years of age from his or her home or the custody of his or her parent or guardian; or

c. By force or threat of imminent force, detains any child under 18 years of age who is away from his or her home or the custody of his or her parent or guardian [s. 940.32, Stats.].

There are a number of other criminal statutes which relate to the taking away or detaining of children and other persons. To assist in a review of the abduction statute and the interfering with custody statutes (discussed in Part II of this Paper) see the chart in Appendix 1 which compares the current abduction, false imprisonment, taking hostages, kidnapping and interfering with custody statutes, based on the prohibited conduct, age of victim and penalty classifications. The statutes related to kidnapping, taking hostages and false imprisonment are not covered in the Paper because these are crimes of general applicability, not specifically child-related crimes. However, they are included in the chart:

a. Because they could, under appropriate circumstances, be charged in cases involving the alleged unlawful taking or concealing of a child in lieu of, or in addition to, the abduction or interfering with custody statutes discussed in this Paper; and

b. So that comparisons can be made in the elements and penalty levels of these crimes and the child-related crimes of abduction and interfering with custody to determine what penalty levels are appropriate for the child-related crimes.

2. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 940.32, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. "Immoral Purpose" Element

a. Background

The abduction statute imposes criminal liability only if the person who takes, entices or detains a child does so for an "unlawful or immoral purpose." The statute does not define, and the case law has not clarified, what is meant by the vague term "immoral purpose." The Law School Proposal recommends that the term "immoral purpose" be deleted from the abduction statute. The Proposal states that since only criminal immoral purposes are intended to be covered by the statute, the general term "unlawful purpose" incorporated the term "immoral purpose."

b. Suggestion

The Special Committee could consider deleting the term "immoral purpose" from the abduction statute.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.32 (intro.), Abducting the Child of Another.]

2. Applicability

a. Background

The current abduction statute applies to any person who abducts a child under the circumstances prescribed in the statute, including a parent who abducts his or her child. As noted in Part II of this Discussion Paper, there are other statutory provisions which specifically prohibit a parent from taking or concealing his or her child from the other parent or other lawful custodian of the child [ss. 946.71 and 946.715, Stats.].

The Law School Proposal recommends that the abduction statute apply only to a person who abducts a child who is not his or her own child by birth or adoption. This change would differentiate the abduction statute

from those statutes which specifically relate to taking one's own child from the lawful custodian.

b. Suggestion

The Special Committee could consider specifying that the abduction statute applies only to a person who abducts a child who is not his or her own child by birth or adoption.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.32 (1) and (2), Abducting the Child of Another.]

3. Levels of Abduction

a. Background

The current abduction statute requires that, for a violation to occur, a child must be (i) taken or detained by force or threat of imminent force or (ii) enticed. The penalty for these two types of violations is a Class C felony.

The Law School Proposal suggests replacing the current abduction statute with two levels of penalties, as follows:

(i) The penalty if a child is taken or detained, would be a Class C felony, punishable by a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both (the same as current law).

(ii) The penalty if a child is taken or detained by force or threat of imminent force, would be a Class B felony, punishable by imprisonment not to exceed 20 years which parallels the penalty for kidnapping [s. 940.31, Stats.] which also has the element of force or threat of imminent force.

The Proposal also suggests eliminating the "enticement" provision from the abduction statute as unnecessary; enticement for purposes of abduction could be prosecuted under the child enticement statute [s. 944.12, Stats.].

b. Suggestion

The Special Committee could consider establishing two levels of penalties for the crime of child abduction based on whether force or threat of imminent force is used; and setting appropriate penalties for these crimes which would reflect the type of conduct involved.

The Special Committee could also consider eliminating the enticement provision from the abduction statute.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.32 (1) and (2), Abducting the Child of Another.]

4. Custody of a Parent or Guardian

a. Background

The current abduction statute applies to any person who unlawfully takes or entices a child "from his home or the custody of his parent or guardian" (emphasis added). The phrase, "from the custody of his parent or guardian," seems to indicate that the child has to be in the actual physical custody of the parent or guardian at the time the child is taken. However, Wisconsin Jury Instructions--Criminal, Numbers 1285 and 1286, specify that the term "custody" as used in the abduction statute includes:

> ...actual custody and also constructive custody while the child is out of the presence of his (parent) (guardian). A child is in the custody of a (parent) (guardian) even while the (parent) (guardian) is not present if the (parent) (guardian) has control of the child.

A comment to this portion of the Instructions states that the Jury Instructions Committee interprets the abduction statute to apply to the taking or enticing of a child who is away from home and away from the actual physical custody of the parents (e.g., taking a child from a neighbor's home or from the physical custody of a relative or babysitter) as well as to a child who is actually with the parents.

b. Suggestion

The Special Committee could consider clarifying the phrase, "from the custody of his parent or guardian," by specifying that the statute also applies if the child is out of the presence of his or her custodial parent or guardian if the parent or guardian has control of the child.

PART II

INTERFERING WITH CUSTODY

A. EXPLANATION OF CURRENT LAW

1. Interfering With Custody of a Child

a. Description of Interfering with Custody of a Child Statute

Under current law, s. 946.71, Stats., as affected by 1985 Wisconsin Act 176, a person who intentionally does any of the following is guilty of a Class E felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed two years, or both):

(i) Interferes with the custody of any child under the age of 18 who has been committed or whose legal custody or guardianship has been transferred under ch. 48, Stats. (the Children's Code), to the Department of Health and Social Services (DHSS) or to any person, county department or licensed child welfare agency.

(ii) Entices away or takes away any child under the age of 18 from the parent or other person having legal custody under an order or judgment in an action for divorce, legal separation or other specified actions with intent to take the child out of the state for the purpose of depriving the parent or other person of the custody of the child without the consent of the parent or other person. The statute specifies that (a) this prohibition does not apply if the court which awarded custody has consented to the child being taken out of the state by the person who so takes the child; and (b) the fact that joint custody (i.e., both parents have equal rights and responsibilities relating to the child) has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this prohibition.

(iii) Entices away, takes away or withholds for more than 12 hours beyond the court-approved visitation period any child under the age of 14 from a parent or other person having legal custody under an order or judgment in an action for divorce, legal separation or other specified actions without the consent of the legal custodian. The statute specifies that this prohibition does not apply if a court has entered an order authorizing the taking or withholding.

(iv) Entices away, takes away or withholds for more than 12 hours any child under the age of 14 from the parents, or the child's mother in the case of a "nonmarital child" (i.e., child born out of wedlock) where the parents do not subsequently intermarry without the consent of the

parents or the mother. The statute specifies that this prohibition does not apply if custody has been granted by court order to the person enticing, taking or withholding the child.

b. Discussion of Relevant Court Decisions and Other Interpretations

There are no relevant court decisions or other interpretations of s. 946.71, Stats.

2. Interference by Parent With Other Parent's Custody Rights

a. Description of Interference by Parent With Other Parent's Custody Rights Statute

Under current law, s. 946.715, Stats., any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class E felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed two years, or both):

(i) Intentionally conceals a minor child from the child's other parent;

(ii) After being served with process in an action affecting the family (e.g., divorce or legal separation), but prior to the issuance of a temporary or final order determining custody rights to a minor child, takes or entices the child outside of this state for the purpose of depriving the other parent of physical custody;

(iii) After issuance of a temporary or final order specifying joint custody rights, takes or entices a child under the age of 14 from the other parent in violation of the custody order.

Current law specifies that a person does not violate any of these prohibitions if the action:

(i) Is taken to protect the child from imminent physical harm;

(ii) Is taken by a parent fleeing from imminent physical harm to himself or herself;

(iii) Is consented to by the other parent; or

(iv) Is otherwise authorized by law.

b. Discussion of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 946.715, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

1. Applicable Ages

a. Background

As indicated above, several provisions in s. 946.71, Stats., the interfering with custody statute, and one provision in s. 946.715, the interference by a parent with parental rights of the other parent statute, apply only to children under the age of 14 (see item (A) (1) (a) (iii) and (iv) and (2) (a) (iii), above). The Law School Proposal recommends making these provisions applicable to any child (i.e., any person under the age of 18) and not just to a child under the age of 14. The Proposal supports this change because a child is entitled to the security of a family until he or she reaches the age of majority, 18, and "can be out on his or her own."

b. Suggestion

The Special Committee could consider amending ss. 946.71 (3) and (4) and 946.715 (1) (c), Stats., from 14 to 18 to make the provisions which are currently applicable to children under the age of 14 applicable to persons under age 18.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.51, Interfering With the Custody of a Child.]

2. "Outside of State" Requirement

a. Background

Current s. 946.715 (1) (b), Stats., prohibits a parent who, has been served with process in an action affecting the family, from taking or enticing his or her minor child outside of the state in order to deprive the other parent of physical custody. The Law School Proposal recommends repealing this requirement. This change may have been recommended on the grounds that there is no significant difference in the effect on a child

and the child's custodian whether the perpetrator takes the child outside the state or keeps the child within the state.

b. Suggestion

The Special Committee could consider deleting the requirement in current s. 946.715 (1) (b), Stats., that a child be taken or enticed outside of the state before a violation of the statute can occur.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.51, Interfering With the Custody of a Child.]

3. Consent to Taking

a. Background

Current s. 946.715, relating to interference with parental rights by a parent, provides a defense to criminal liability, if the parent's action in taking the child is consented to by the other parent. The Law School Proposal recommends expanding the category of persons who may consent to the taking of a child under that statute to include any "agency having legal custody of the child." This change was recommended in order to cover those situations where legal custody of a child has been transferred under ch. 48, Stats., to the DHSS, a county child welfare agency or a licensed child welfare agency (e.g., a child in a foster home or a group home).

b. Suggestion

The Special Committee could consider expanding the category of persons who may consent to the taking of a child under s. 946.715, Stats., to include any agency having legal custody of the child.

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.51, Interfering With the Custody of a Child.]

4. Venue

a. Background

Under current s. 971.19, with certain exceptions, criminal actions must be tried in the county where the crime was committed. This statute includes custody interference actions, which must be tried in the county in which the child is taken, concealed or detained. At least one state, Minnesota, applies a broader venue provision in its custody interference statute, which permits the actions to be prosecuted either in the county in which the child was taken, concealed or detained or in the county of lawful residence of the child. This venue provision apparently is directed at reducing the trauma on the child of the criminal court process by permitting the case to be prosecuted in the child's home county if the child has been taken outside that county.

b. Suggestion

The Special Committee could consider creating a special venue provision for the custody interference statutes, by permitting an alleged violator to be prosecuted either: (i) in the county in which the child was taken, concealed or detained (current law); or (ii) in the county of lawful residence of the child.

5. Defenses

a. Background

As noted above, under s. 946.715, two of the defenses to a custody interference violation by a parent are (i) that the parent took the child in order to protect the child "from imminent physical harm"; and (ii) that the action was taken by a parent fleeing from "imminent physical harm" to the parent. Except for sexual abuse involving "imminent physical harm," the statute does not provide a defense if the parent takes the child to avoid sexual abuse of or emotional harm to the parent or child. However, there may be circumstances where taking a child because of such abuse or harm would be as justifiable as taking the child because of "imminent physical harm."

The term "emotional harm" is not defined in the current Criminal Code. However, the following definition of "emotional damage" is contained in the current law on abused or neglected children reporting:

> "Emotional damage" means harm to a child's psychological or intellectual functioning which is exhibited by severe anxiety, depression, withdrawal

> or outward aggressive behavior, or a combination of those behaviors, which is caused by the child's parent, guardian, legal custodian or other person exercising temporary or permanent control over the child and for which the child's parent, guardian or legal custodian has failed to obtain the treatment necessary to remedy the harm. "Emotional damage" may be demonstrated by a substantial and observable change in behavior, emotional response or cognition that is not within the normal range for the child's age and stage of development [s. 48.981 (1) (cm), Stats.].

In addition, the Law School Proposal contains the following definition of "emotional or mental harm" in the general definition section to proposed ch. 960:

> "Emotional or mental harm" means harm to a child's psychological or intellectual functioning. It includes, but is not limited to, emotional deprivation, verbal abuse or neglect. Emotional or mental harm may be evidenced by a severe degree of certain characteristics of the child, including, but not limited to, anxiety, depression, withdrawal or outward aggressive behavior [Law School Proposal, s. 960.02 (4)].

b. Suggestion

The Special Committee could consider expanding the defenses to custody interference by a parent to include: protecting the child from sexual assault or emotional damage, or both; or protecting the parent taking the action from sexual assault or emotional damage, or both.

If the Special Committee decides to include "emotional damage" in the defense, it could consider defining "emotional damage" by:

(i) Cross-referencing the definition of that term in the child abuse reporting law; or

(ii) Using the definition of "emotional or mental harm" suggested by the Law School Proposal in s. 960.02 of the Proposal.

6. Returning the Child

a. Background

Returning a child who has been unlawfully taken from his or her legal custodian may be expensive, depending on the distance the child has been taken, the need for a person to escort the child back to the legal custodian (e.g., in the case of a young or injured child) and the availability of public transportation. Current Wisconsin law does not specify who is to pay the expenses of returning the child. Thus, these expenses are borne either by the legal custodian to whom the child is returned or, if the legal custodian is without the necessary funds, the custodian's county.

b. Suggestion

The Special Committee could consider:

(i) Requiring or allowing the court to include, as part of the judgment against an offender under the interfering with custody statutes, any expenses incurred in returning the child or children who have been unlawfully taken from a parent or other custodian; and

(ii) Specifying that, if collected from the offender, the funds must be given to the person or agency which paid the expenses.

7. Taking Custody

Under current s. 48.19, a child may be taken into custody by a law enforcement officer for various reasons (e.g., if the officer believes that the child is in immediate danger from his or her surroundings and removal is necessary). However, there is nothing in current law which permits a law enforcement officer to take a child into custody if the officer believes the child is in danger of being a victim of a custody interference offense.

1985 Assembly Bill 623 would have permitted a law enforcement officer to take a child into custody under such circumstances. After the child had been taken into protective custody, the child's release would have depended on whether he or she was still in danger of being the victim of the custody interference offense. Assembly Bill 623 received a public hearing before the Assembly Children and Human Services Committee, but no further action was taken and the Bill failed to pass.

b. Suggestion

The Special Committee could consider:

(i) Specifying that a law enforcement officer may take a child into custody, if the officer believes that the child is in danger of being a victim of a custody interference offense under ss. 946.71 or 946.715, Stats.; and

(ii) Establishing appropriate procedures and guidelines for releasing the child from such protective custody.

PART III

UNAUTHORIZED PLACEMENT FOR ADOPTION

A. EXPLANATION OF CURRENT LAW

1. Description of Unauthorized Placement for Adoption Statute

Under current s. 946.716, Stats., any person who does any of the following is guilty of a Class E felony (punishable by a fine not to exceed $10,000 or imprisonment not to exceed two years, or both):

a. Places or agrees to place his or her child for adoption for anything exceeding the actual cost of: (i) the hospital and medical expenses of the mother and the child incurred in connection with the child's birth; and (ii) legal and other services rendered in connection with the adoption.

b. For anything of value, solicits, negotiates or arranges the placement of a child for adoption, as authorized by s. 48.833, Stats. [That statute permits the DHSS, a county child welfare agency or a licensed child welfare agency to place a child for adoption in a licensed foster home, without a court order, if the DHSS or agency is the guardian of the child or makes the placement at the request of another agency which is the guardian of the child.]

c. In order to receive a child for adoption, gives anything exceeding the actual cost of (i) the hospital and medical expenses of the mother and the child incurred in connection with the child's birth; and (ii) the legal and other services rendered in connection with the adoption.

2. Description of Relevant Court Decisions and Other Interpretations of the Law

There are no relevant court decisions or other interpretations of s. 946.716, Stats.

B. SUGGESTIONS FOR STATUTORY REVISIONS

The Law School Proposal recommends no substantive changes in s. 946.716, Stats., because the statute "is specific, has not been challenged since its creation [in 1981] and fulfills the important purpose of precluding the sale of children."

[For the specific language suggested in the Law School Proposal, see the following provision of the Proposal: s. 960.52, Placing a Child for Adoption Without Authorization.]

DLS:las:wf:kjf:ckm;jmm

APPENDIX 1

COMPARISON OF CRIMES INVOLVING TAKING OR CONCEALING CHILDREN

COMPARISON OF CRIMES INVOLVING TAKING OR
CONCEALING CHILDREN

TYPE OF CRIME	STATUTORY REFERENCE	ELEMENTS OF PROHIBITED CONDUCT *	AGE OF VICTIM	CLASS OF PENALTY	PENALTY
False Imprisonment	s. 940.30	1. Intentionally confining or restraining any person 2. Without the person's consent 3. With knowledge that no lawful authority to do so	No age limit specified	Class E felony	$10,000 fine or two years imprisonment, or both
Taking Hostages	s. 940.305	1. Seizing, confining or restraining any person 2. Without the person's consent 3. By force or threat of imminent force 4. With intent to use the person as a hostage in order to influence a person to perform or not to perform some action	No age limit specified	1. Class A felony, except under 2, below 2. Class B felony if person released without bodily harm prior to defendant's arrest	1. Life imprisonment 2. 20 years imprisonment
Kidnapping	s. 940.31 (1) (a)	1. Carrying any person from one place to another 2. Without the person's consent 3. By force or threat of imminent force 4. With intent to cause person to be secretly confined or imprisoned, to be carried out of the state or to be held "to service" against the person's will	No age limit specified	1. Class B felony, except under 2, below 2. Class A felony if defendant had intent to cause another person to transfer property to obtain victim's release, but Class B felony if victim is released without permanent physical injury prior to the time the first witness is sworn at the trial	1. 20 years imprisonment 2. Life imprisonment, except if Class B felony, 20 years imprisonment

TYPE OF CRIME	STATUTORY REFERENCE	ELEMENTS OF PROHIBITED CONDUCT *	AGE OF VICTIM	CLASS OF PENALTY	PENALTY
Kidnapping (continued)	s. 940.31 (1) (b)	1. Seizing or confining any person 2. Without the person's consent 3. By force or threat of imminent force 4. With intent to cause the person to be secretly confined or imprisoned, to be carried out of the state or to be held 'to service' against the person's will	No age limit specified	Same as s. 940.31 (1) (a)	Same as s. 940.31 (1) (a)
	s. 940.31 (1) (c)	1. Inducing another person to go from one place to another 2. By deceit 3. To cause the person to be secretly confined or imprisoned or to be carried out of the state against the person's will	No age limit specified	Same as s. 940.31 (1) (a)	Same as s. 940.31 (1) (a)
Abduction	s. 940.32 (1)	1. Taking child from home or custody of parent or guardian 2. By force or threat of imminent force 3. For unlawful or immoral purpose	Child under 18 years of age	Class C felony	$10,000 fine or 10 years imprisonment, or both
	s. 940.32 (2)	1. Enticing child from home or custody of parent or guardian 2. For unlawful or immoral purpose	Child under 18 years of age	Same as s. 940.32 (1)	Same as s. 940.32 (1)
	s. 940.32 (3)	1. Detaining child away from home or custody of parent or guardian 2. For unlawful or immoral purpose	Child under 18 years of age	Same as s. 940.32 (1)	Same as s. 940.32 (1)

TYPE OF CRIME	STATUTORY REFERENCE	ELEMENTS OF PROHIBITED CONDUCT *	AGE OF VICTIM	CLASS OF PENALTY	PENALTY
Interference With Custody of a Child	s. 946.71 (1)	Intentionally interfering with custody of child who has been committed to or has had legal custody transferred to a child welfare agency or state	Child under 18 years of age	Class E felony	$10,000 fine or two years imprisonment, or both
	s. 946.71 (2)	1. Intentionally enticing away or taking away child from parent or other legal custodian having custody under court order or judgment in divorce or other action 2. With intent to take child out of state to deprive parent or other legal custodian of custody 3. Without the consent of the parent or other legal custodian	Child under 18 years of age	Same as s. 946.71 (1)	Same as s. 946.71 (1)
	s. 946.71 (3)	1. Intentionally enticing, taking away or withholding for more than 12 hours beyond visitation period child from parent or other legal custodian having custody under court order or judgment in divorce or other action 2. Without the consent of the parent or other legal custodian	Child under 14 years of age	Same as s. 946.71 (1)	Same as s. 946.71 (1)
	s. 946.71 (4)	1. Intentionally enticing, taking away or withholding for more than 12 hours child from parent or, in case of non-marital child, child's mother 2. Without consent of parent or mother	Child under 14 years of age	Same as s. 946.71 (1)	Same as s. 946.71 (1)

TYPE OF CRIME	STATUTORY REFERENCE	ELEMENTS OF PROHIBITED CONDUCT [a]	AGE OF VICTIM	CLASS OF PENALTY	PENALTY
Interference by Parent With Parental Rights of Other Parent	s. 946.715 (1) (a)	Intentionally concealing a minor child from child's other parent	Child under 18 years of age	Class E felony	$10,000 fine, two years imprisonment, or both
	s. 946.715 (1) (b)	1. Taking or enticing child outside of state 2. After being served with process in divorce or other action but prior to issuance of temporary or final child custody order 3. For purpose of depriving other parent of physical custody of the child	Child under 18 years of age	Same as s. 946.715 (1) (a)	Same as s. 946.715 (1) (a)
	s. 946.715 (1) (c)	1. Taking or enticing child from other parent in violation of custody order 2. After issuance of temporary or final order specifying joint custody rights	Child under 14 years of age	Same as s. 946.715 (1) (a)	Same as s. 946.715 (1) (a)

[a]Except for s. 946.715 (1) (a) to (c), Stats., refers to any person who violates the prohibition. Section 946.715 (1) (a) to (c) applies to any parent, or person acting pursuant to a parent's direction, who violates the prohibition.

SOURCE: Prepared by Legislative Council Staff from current statutes.

APPENDIX 2

STATUTES DISCUSSED IN DISCUSSION PAPER 86-1D

(LISTED IN NUMERICAL ORDER)

STATUTES DISCUSSED IN DISCUSSION PAPER 86-1D
(LISTED IN NUMERICAL ORDER)

939.50 CLASSIFICATION OF FELONIES. (1) Except as provided in ss. 946.83 and 946.85, felonies in chs. 939 to 948 are classified as follows:

(a) Class A felony.

(b) Class B felony.

(c) Class C felony.

(d) Class D felony.

(e) Class E felony.

(2) A felony is a Class A, B, C, D or E felony when it is so specified in chs. 939 to 948.

(3) Penalties for felonies are as follows:

(a) For a Class A felony, life imprisonment.

(b) For a Class B felony, imprisonment not to exceed 20 years.

(c) For a Class C felony, a fine not to exceed $10,000 or imprisonment not to exceed 10 years, or both.

(d) For a Class D felony, a fine not to exceed $10,000 or imprisonment not to exceed 5 years, or both.

(e) For a Class E felony, a fine not to exceed $10,000 or imprisonment not to exceed 2 years, or both.

939.51 CLASSIFICATION OF MISDEMEANORS. (1) Misdemeanors in chs. 939 to 948 are classified as follows:

(a) Class A misdemeanor.

(b) Class B misdemeanor.

(c) Class C misdemeanor.

(2) A misdemeanor is a Class A, B or C misdemeanor when it is so specified in chs. 939 to 948.

(3) Penalties for misdemeanors are as follows:

(a) For a Class A misdemeanor, a fine of not to exceed $10,000 or imprisonment not to exceed 9 months, or both.

(b) For a Class B misdemeanor, a fine not to exceed $1,000 or imprisonment not to exceed 90 days, or both.

(c) For a Class C misdemeanor, a fine not to exceed $500 or imprisonment not to exceed 30 days, or both.

939.52 CLASSIFICATION OF FORFEITURES. (1) Except as provided in s. 946.85, forfeitures in chs. 939 to 948 are classified as follows:

(a) Class A forfeiture.

(b) Class B forfeiture.

(c) Class C forfeiture.

(d) Class D forfeiture.

(2) A forfeiture is a Class A, B, C or D forfeiture when it is so specified in chs. 939 to 948.

(3) Penalties for forfeitures are as follows:

(a) For a Class A forfeiture, a forfeiture not to exceed $10,000.

(b) For a Class B forfeiture, a forfeiture not to exceed $1,000.

(c) For a Class C forfeiture, a forfeiture not to exceed $500.

(d) For a Class D forfeiture, a forfeiture not to exceed $200.

940.30 FALSE IMPRISONMENT. Whoever intentionally confines or restrains another without the person's consent and with knowledge that he or she has no lawful authority to do so is guilty of a Class E felony.

940.305 TAKING HOSTAGES. Whoever by force or threat of imminent force seizes, confines or restrains a person without the person's consent and with the intent to use the person as a hostage in order to influence a person to perform or not to perform some action demanded by the actor is guilty of a Class A felony; but if each person who is held as a hostage is released without bodily harm prior to the time of the defendant's arrest, the defendant is guilty of a Class B felony.

940.31 KIDNAPPING. (1) Whoever does any of the following is guilty of a Class B felony:

(a) By force or threat of imminent force carries another from one place to another without his consent and with intent to cause him to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his will; or

(b) By force or threat of imminent force seizes or confines another without his consent and with intent to cause him to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his will; or

(c) By deceit induces another to go from one place to another with intent to cause him to be secretly confined or imprisoned or to be carried out of this state or to be held to service against his will.

(2) Whoever violates sub. (1) with intent to cause another to transfer property in order to obtain the release of the victim is guilty of a Class A felony; but if the victim is released without permanent physical injury prior to the time the first witness is sworn at the trial the defendant is guilty of a Class B felony.

940.32 ABDUCTION. Whoever, for any unlawful or immoral purpose, does any of the following is guilty of a Class C felony:

(1) By force or threat of imminent force, takes any child under 18 years of age from his home or the custody of his parent or guardian; or

(2) Entices any child under 18 years of age from his home or the custody of his parent or guardian; or

(3) By force or threat of imminent force, detains any child under 18 years of age who is away from his home or the custody of his parent or guardian.

946.71 INTERFERENCE WITH CUSTODY OF CHILD. Except as provided under ch. 48, whoever intentionally does any of the following is guilty of a Class E felony:

(1) Interferes with the custody of any child under the age of 18 who has been committed or whose legal custody or guardianship has been transferred under ch. 48 to the department of health and social services or to any person, county department under s. 46.215, 46.22 or 46.23 or licensed child welfare agency.

(2) Entices away or takes away any child under the age of 18 from the parent or other person having legal custody under an order or judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus with intent to take the child out of the state for the purpose of depriving the parent or other person of the custody of the child without the consent of such parent or other person, unless the court which awarded custody has consented that the child be taken out of the state by the person who so takes the child. The fact that joint custody has been awarded to both parents by a court does not preclude a court from finding that one parent has committed a violation of this subsection.

(3) Entices away, takes away or withholds for more than 12 hours beyond the court-approved visitation period any child under the age of 14 from a parent or other person having legal custody under an order or judgment in an action for divorce, legal separation, annulment, custody, paternity, guardianship or habeas corpus without the consent of the legal

custodian, unless a court has entered an order authorizing the taking or withholding.

(4) Entices away, takes away or withholds for more than 12 hours any child under the age of 14 from the parents, or the child's mother in the case of a nonmarital child where parents do not subsequently intermarry under s. 767.60, without the consent of the parents or the mother, unless custody has been granted by court order to the person enticing, taking or withholding the child.

946.715 INTERFERENCE BY PARENT WITH PARENTAL RIGHTS OF OTHER PARENT. (1) Any parent, or any person acting pursuant to directions from the parent, who does any of the following is guilty of a Class E felony:

(a) Intentionally conceals a minor child from the child's other parent;

(b) After being served with process in an action affecting the family but prior to the issuance of a temporary or final order determining custody rights to a minor child, takes or entices the child outside of this state for the purpose of depriving the other parent of physical custody as defined in s. 822.02 (9); or

(c) After issuance of a temporary or final order specifying joint custody rights, takes or entices a child under the age of 14 from the other parent in violation of the custody order.

(2) No person violates sub. (1) if the action:

(a) Is taken to protect the child from imminent physical harm;

(b) Is taken by a parent fleeing from imminent physical harm to himself or herself;

(c) Is consented to by the other parent; or

(d) Is otherwise authorized by law.

946.716 UNAUTHORIZED PLACEMENT FOR ADOPTION. (1) Whoever does any of the following is guilty of a Class E felony:

(a) Places or agrees to place his or her child for adoption for anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption.

(b) For anything of value, solicits, negotiates or arranges the placement of a child for adoption except under s. 48.833.

(c) In order to receive a child for adoption, gives anything exceeding the actual cost of the hospital and medical expenses of the mother and the child incurred in connection with the child's birth, and of the legal and other services rendered in connection with the adoption.

(2) This section does not apply to placements under s. 48.839, 48.98 or 48.988.